



HISTORY AND THEORY OF INTERNATIONAL LAW
2009-2010

Spring 2010

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University of Toronto

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1. David Kennedy, "The Disciplines of International Law and Policy" (1999) 12 *Leiden Journal of International Law* 9, 83-101
2. Nobel Lecture by Barack H. Obama, Oslo, 10 December 2009
3. W. Michael Reisman, "Towards a Normative Theory of Differential Responsibility for International Security Functions: Responsibilities of Major Powers" in Nisuke Ando, ed., *Japan and International Law: Past, Present and Future* (The Hague: Kluwer Law International, 1999) 43-57
4. Anthony Carty, "Distance and Contemporaneity in Exploring the Practice of States: The British Archives in Relation to the 1957 Oman and Muscat Incident" (2005) 9 *Singapore Year Book of International Law* 75-85
5. Yasuaki Onuma, "When was the Law of International Society Born?" (2000) 2 *Journal of the History of International Law* 1, 2-3, 8-11 (excerpted)

II Scholasticism: Vitoria (c.1486-1546)

1. Francisco de Vitoria, "De Indis (On the American Indians)" (c. 1538), in Francisco de Vitoria, *Political Writings*, ed. by Anthony Pagden and Jeremy Lawrence (Cambridge: Cambridge University Press, 1991)
2. Antony Anghie, "The War on Terror and Iraq in Historical Perspective" (2005) 43 *Osgoode Hall Law Journal* 45-66

Anghie argues that the war in Iraq reflects the replication of ideas found in Vitoria.

III Grotius (1583-1645)

1. Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (New York: Oxford University Press, 1999) ch. 3
2. Hugo Grotius, *De Jure Belli ac Pacis (The Law of War and Peace)* (1625), Prolegomena and Book I, chaps 1 and 2; Book II, ch. 20, sections 40-44.4 and 47.5-51; and Book II, ch. 21, sections 1-4.2

IV Hobbes (1588-1679)

Thomas Hobbes, *Leviathan* (1651), chs 13-14, 15-16, 26

V Vattel (1714-1767)

Emmerich de Vattel, *Le Droit des Gens* (The Law of Nations) (1758), Preface by Vattel, Preliminaries, Book I, Chs 1-3 (ss. 1-37), Book I, Chs 6-8 (ss. 72-99)

VI Positivism

Lassa Oppenheim, *International Law: A Treatise*, 2nd ed., (London: Longmans, 1912) vol. 1, 3-44

See the e-book on library website:

http://galenet.galegroup.com.myaccess.library.utoronto.ca/servlet/MOML?dd=0&locID=utoronto_main&d1=20003538601&srchtp=a&c=1&an=20003538601&df=f&d2=33&docNum=F3753526749&h2=1&vrsn=1.0&af=RN&d6=33&d3=33&ste=10&stp=Author&d4=0.33&d5=d6&ae=F153526717

H.L.A. Hart, *The Concept of Law*, 2d ed. (Oxford: Oxford University Press, 1994) ch. X (excerpted)

For one recent significant project building specifically on Hartian positivism in international law, see Benedict Kingsbury, "The Concept of 'Law' in Global Administrative Law" (2009) 20 *European Journal of International Law* 23

VII New Sovereignists

1. Jack L. Goldsmith and Eric R. Posner, *The Limits of International Law* (New York: Oxford University Press, 2005) 3-14

2. Curtis A. Bradley, "The Costs of International Human Rights Litigation" (2001) 2 *Chicago Journal of International Law* 457-473

Curtis Bradley, Jack Goldsmith, Eric Posner and John Yoo are often grouped together as a new US school of international law, which has been referred to by one critic as the "new sovereignists" (Peter Spiro, "The New Sovereignists: American Exceptionalism and its False Prophets" (2000) 79:6 *Foreign Affairs* 9; for Bradley and Goldsmith's reply, see (2001) 80:2 *Foreign Affairs* 188). As the

two pieces included here illustrate, these authors deal both with international law and with its relationship to domestic law, particularly from the perspective of the US constitution.

With regard to the Bradley article, note that such litigation has been attempted unsuccessfully in Canada as an ordinary tort action, and legislative changes have been proposed to open the door to this type of litigation. For the Canadian context, see Noah Benjamin Novogrodsky, "Immunity for Torture: Lessons from *Bouzari v. Iran*" (2007) 18 *European Journal of International Law* 939

VIII New Haven School of International Law

W. Michael Reisman, "The View from the New Haven School of International Law" (1992) 86 *American Society of International Law Proceedings* 118-125

The New Haven School of International Law was developed by two Yale professors, Myres S. McDougal, a lawyer, and Harold D. Lasswell, a political scientist. Reisman, their colleague at Yale Law School, became a collaborator in and successor to their approach.

For a collection of articles exploring whether there is a "New New Haven School of International Law," see the symposium in (2007) 32:2 *Yale Journal of International Law*.

IX Interactional Account of International Law

Jutta Brunnée and Stephen J. Toope, "Persuasion and Enforcement: Explaining Compliance with International Law" (2002) 13 *Finnish Yearbook of International Law* 1-23

Brunnée and Toope develop these ideas most extensively in their forthcoming book, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge: Cambridge University Press, forthcoming 2010). A draft chapter outlining their theoretical framework is available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1162882

X Islamic International Law

1. Marcel A. Boisard, "On the Probable Influence of Islam on Western Public and International Law" (1980) 11 *International Journal of Middle East Studies* 429

2. Mohammad Fadel, "International Law, Regional Developments: Islam" in R. Wolfrum, ed., *Max Planck Encyclopedia of Public International Law*, forthcoming

XI International Law, Imperialism and Third World Approaches to International Law (“TWAIL”)

1. James Thuo Gathii, “International Law and Eurocentricity” (1998) 9 *European Journal of International Law* 184-199 (excerpted)
2. Susan Marks, “Empire’s Law” (2003) 10 *Indiana Journal of Global Legal Studies* 449-466
3. B.S. Chimni, “Third World Approaches to International Law: A Manifesto” (2006) 8 *International Community Law Review* 3-4, 7-27

XII Feminist Approaches to International Law

1. Hilary Charlesworth, Christine Chinkin and Shelley Wright, “Feminist Approaches to International Law” (1991) 85 *American Journal of International Law* 613-630, 634, 642-645 (excerpted)

This article is generally regarded as the piece that introduced feminism into international law (as distinct from international human rights law, where feminist approaches developed in the domestic context are more straightforwardly applicable). Charlesworth and Chinkin develop these ideas in *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000).

For the authors’ reflections on this piece a decade later, along with other feminist approaches, see Doris Buss and Ambreena Manji, eds., *International law: Modern Feminist Approaches* (Oxford, UK: Hart Publishing Ltd., 2005).

2. Karen Knop, “Of the Male Persuasion: The Power of Liberal Internationalism for Women” (1999) 93 *American Society of International Law Proceedings* 177-185

XIII New Approaches to International Law (“NAIL”): Critical Legal Studies

1. Martti Koskenniemi, “The Politics of International Law” (1990) 1 *European Journal of International Law* 4-32

This article is a condensed version of a number of the themes found in Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, originally published in 1989 and reissued in 2005 with a new epilogue.

For a collection of short essays on the occasion of the reissue, see

<http://www.germanlawjournal.com/index.php?pageID=2&vol=7&no=12>

See also David Kennedy, *International Legal Structures* (Baden-Baden: Nomos, 1987) (a major influence on Koskenniemi's approach). Kennedy's and Koskenniemi's books originate the style of international legal scholarship known as NAIL. Kennedy compares his book with Koskenniemi's *From Apology to Utopia* in his essay in the above collection, see

<http://www.germanlawjournal.com/index.php?pageID=11&artID=772>

2. Nathaniel Berman, "Modernism, Nationalism, and the Rhetoric of Reconstruction" 4 Yale Journal of Law and Humanities (1992) 351-369 (excerpted)

On Berman's approach, see the introduction to his translated essays by Emmanuelle Jouannet in Nathaniel Berman, *Passions et Ambivalences* (Paris: Editions A. Pedone, 2008) (in French). Like Berman, Ed Morgan also seeks to reveal the modernity of international law by comparing developments in the field with those in other modern fields of expression, in Morgan's case, with literature. See Ed Morgan, *The Aesthetics of International Law* (2007).

3. David Kennedy, "Autumn Weekends: An Essay on Law and Everyday Life" in Austin Sarat and Thomas R. Kearns, eds., *Law and Everyday Life* (Ann Arbor: University of Michigan Press, 1993) 191-211 (excerpted)

For the development of Kennedy's more recent scholarship along these lines, see his *The Dark Side of Virtue: Reassessing International Humanitarianism* (Princeton: Princeton University Press, 2004), which includes a version of this essay.

